

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:06CR348</b>
)		
<b>Plaintiff,</b>	)	
)		
<b>vs.</b>	)	<b>MEMORANDUM AND ORDER</b>
)		
<b>LUIS F. MARTINEZ-CORTES,</b>	)	
)		
<b>Defendant.</b>	)	

This matter is before the Court on the Report and Recommendation (Filing No. 57) issued by Magistrate Judge F.A. Gossett recommending denial of the motion to suppress filed by the Defendant, Luis F. Martinez-Cortes (Filing No. 16). Martinez-Cortes filed a statement of objections to the Report and Recommendation (Filing No. 58) as allowed by 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a).<sup>1</sup>

The Defendant is charged in a two-count Indictment with: conspiracy to distribute and possess with intent to distribute a mixture or substance containing methamphetamine (Count I); and possession with intent to distribute a mixture or substance containing methamphetamine (Count II). He seeks an order suppressing evidence and statements obtained as a result of his encounter with law enforcement officers on October 3, 2006.

Following an evidentiary hearing, Judge Gossett issued a Report and Recommendation in which he concluded: reasonable suspicion existed for the stop of the vehicle driven by Martinez-Cortes; officers were entitled to ask for identification and to continue the *Terry* stop once they knew the identity of the driver; probable cause justified

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<sup>1</sup>It appears that Martinez-Cortes attempted to file a supporting brief. However, the document reflected in the docket report as a brief is a second copy of Martinez-Cortes's objections.

Martinez-Cortes's arrest given that he had no valid driver's license and was the subject of an active arrest warrant; the console in the vehicle was large enough to accommodate a weapon; methamphetamine was found in the console; and the automobile exception to the search warrant requirement applied.

On the basis of these determinations, Judge Gossett recommended that Martinez-Cortes's motion be denied.

### **STANDARD OF REVIEW**

Pursuant to 28 U.S.C. § 636(b)(1)(C) and NECrimR 57.3(a), the Court shall make a de novo determination of those portions of the report, findings, and recommendations to which the Defendant has objected. The Court may accept, reject, or modify, in whole or in part, the Magistrate Judge's findings or recommendations. The Court may also receive further evidence or remand the matter to the Magistrate Judge with instructions.

### **STATEMENT OF FACTS**

The Magistrate Judge provided a detailed account of the events surrounding the events relevant to the traffic stop, searches, and arrest. The Court has considered the transcript of the hearing conducted by the Magistrate Judge (Filing No. 44). The Court also carefully viewed the evidence (Filing No. 41). Based on the Court's de novo review of the evidence and arguments, the Court adopts Judge Gossett's factual findings in their entirety.

### **ANALYSIS**

The Defendant objects to several portions of Judge Gossett's Report and Recommendation, arguing: the *Terry* stop was unlawful; the scope and duration of the stop

were unlawfully expanded; Martinez-Cortes was not lawfully arrested, despite the active arrest warrant; the and vehicle search was improper.(Filing No. 58).

Although Martinez-Cortes did not file a brief in support of his objections, the objections mirror the points originally raised in the motion to suppress. In his statement of objections, Martinez-Cortes's counsel also incorporates the brief that accompanied the motion (Filing No. 17) and the post-hearing brief (Filing No. 56). Those briefs have been carefully considered.

The Court agrees with Judge Gossett's conclusions and concludes: the *Terry* stop was lawful; the stop was not unlawfully expanded; Martinez-Cortes was lawfully arrested; and the searches of Martinez-Cortes's person and the vehicle driven by Martinez-Cortes was proper.

IT IS ORDERED:

1. The Magistrate Judge's Report and Recommendation (Filing No. 57) is adopted in its entirety;
2. The Statement of Objections to the Report and Recommendation (Filing No. 58) is denied; and
3. The Defendant's Motion to Suppress (Filing No. 16) is denied.

DATED this 25<sup>th</sup> day of June, 2007.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge